

## § 26.37

## 10 CFR Ch. I (1–1–09 Edition)

(i) Is likely to commit self-harm or harm to others;

(ii) Has been impaired from using drugs or alcohol while in a work status and has a continuing substance abuse disorder that makes it likely he or she will be impaired while in a work status in the future; or

(iii) Has ever engaged in any acts that would be reportable under § 26.719(b)(1) through (b)(3).

(3) If a licensee or other entity receives a report from EAP personnel under paragraph (c)(2) of this section, the licensee or other entity shall ensure that the requirements of §§ 26.69(d) and 26.77(b) are implemented, as applicable.

### § 26.37 Protection of information.

(a) Each licensee or other entity who is subject to this subpart who collects personal information about an individual for the purpose of complying with this part, shall establish, use, and maintain a system of files and procedures that protects the individual's privacy.

(b) Licensees and other entities shall obtain a signed consent that authorizes the disclosure of the personal information collected and maintained under this part before disclosing the personal information, except for disclosures to the following individuals:

(1) The subject individual or his or her representative, when the individual has designated the representative in writing for specified FFD matters;

(2) Assigned MROs and MRO staff;

(3) NRC representatives;

(4) Appropriate law enforcement officials under court order;

(5) A licensee's or other entity's representatives who have a need to have access to the information to perform their assigned duties under the FFD program, including determinations of fitness, FFD program audits, or some human resources functions;

(6) The presiding officer in a judicial or administrative proceeding that is initiated by the subject individual;

(7) Persons deciding matters under review in § 26.39; and

(8) Other persons pursuant to court order.

(c) Personal information that is collected under this subpart must be dis-

closed to other licensees and entities, including C/Vs, or their authorized representatives, who are legitimately seeking the information for authorization decisions as required by this part and who have obtained a signed release from the subject individual.

(d) Upon receipt of a written request by the subject individual or his or her designated representative, the FFD program, including but not limited to, the collection site, HHS-certified laboratory, substance abuse expert (SAE), or MRO, possessing such records shall promptly provide copies of all FFD records pertaining to the individual, including, but not limited to, records pertaining to a determination that the individual has violated the FFD policy, drug and alcohol test results, MRO reviews, determinations of fitness, and management actions pertaining to the subject individual. The licensee or other entity shall obtain records related to the results of any relevant laboratory certification, review, or revocation-of-certification proceedings from the HHS-certified laboratory and provide them to the subject individual on request.

(e) A licensee's or other entity's contracts with HHS-certified laboratories and C/Vs providing specimen collection services, and licensee testing facility procedures, must require test records to be maintained in confidence, except as provided in paragraphs (b), (c), and (d) of this section.

(f) This section does not authorize the licensee or other entity to withhold evidence of criminal conduct from law enforcement officials.

### § 26.39 Review process for fitness-for-duty policy violations.

(a) Each licensee and other entity who is subject to this subpart shall establish procedures for the review of a determination that an individual who they employ or who has applied for authorization has violated the FFD policy. The procedure must provide for an objective and impartial review of the facts related to the determination that the individual has violated the FFD policy.

(b) The procedure must provide notice to the individual of the grounds for the determination that the individual

has violated the FFD policy, and must provide an opportunity for the individual to respond and submit additional relevant information.

(c) The procedure must ensure that the individual who conducts the review is not associated with the administration of the FFD program [see the description of FFD program personnel in §26.4(g)]. Individuals who conduct the review may be management personnel.

(d) If the review finds in favor of the individual, the licensee or other entity shall update the relevant records to reflect the outcome of the review and delete or correct all information the review found to be inaccurate.

(e) When a C/V is administering an FFD program on which licensees and other entities rely, and the C/V determines that its employee, subcontractor, or applicant has violated its FFD policy, the C/V shall ensure that the review procedure required in this section is provided to the individual. Licensees and other entities who rely on a C/V's FFD program need not provide the review procedure required in this section to a C/V's employee, subcontractor, or applicant when the C/V is administering its own FFD program and the FFD policy violation was determined under the C/V's program.

#### § 26.41 Audits and corrective action.

(a) *General.* Each licensee and other entity who is subject to this subpart is responsible for the continuing effectiveness of the FFD program, including FFD program elements that are provided by C/Vs, the FFD programs of any C/Vs that are accepted by the licensee or other entity, any FFD program services that are provided to the C/V by a subcontractor, and the programs of the HHS-certified laboratories on whom the licensee or other entity and its C/Vs rely. Each licensee and other entity shall ensure that these programs are audited and that corrective actions are taken to resolve any problems identified.

(b) *FFD program.* Each licensee and other entity who is subject to this subpart shall ensure that the entire FFD program is audited as needed, but no less frequently than nominally every 24 months. Licensees and other entities are responsible for determining the ap-

propriate frequency, scope, and depth of additional auditing activities within the nominal 24-month period based on the review of FFD program performance, including, but not limited to, the frequency, nature, and severity of discovered problems, testing errors, personnel or procedural changes, and previous audit findings.

(c) *C/Vs and HHS-certified laboratories.*

(1) FFD services that are provided to a licensee or other entity by C/V personnel who are off site or are not under the direct daily supervision or observation of the licensee's or other entity's personnel and HHS-certified laboratories must be audited on a nominal 12-month frequency.

(2) Audits of HHS-certified laboratories that are conducted for licensees and other entities who are subject to this subpart need not duplicate areas inspected in the most recent HHS certification inspection. However, the licensee and other entity shall review the HHS certification inspection records and reports to identify any areas in which the licensee or other entity uses services that the HHS certification inspection did not address. The licensee or other entity shall ensure that any such areas are audited on a nominal 12-month frequency. Licensees and other entities need not audit organizations and professionals who may provide an FFD program service to the licensee or other entity, but who are not routinely involved in providing services to a licensee's or other entity's FFD program, as specified in §26.4(i)(1).

(d) *Contracts.* (1) The contracts of licensees and other entities contracts with C/Vs and HHS-certified laboratories must reserve the right to audit the C/V, the C/V's subcontractors providing FFD program services, and the HHS-certified laboratories at any time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the audits.

(2) Licensees' and other entities' contracts with C/Vs and HHS-certified laboratories must also permit the licensee or other entity to obtain copies of and take away any documents, including reviews and inspections pertaining to a laboratory's certification by HHS, and